SUPREME COURT OF THE UNITED STATES.

No. 131.

SHERBURNE SEARS, PLAINTIFF IN ERROR,

vs.

JOSEPH R. EASTBURN.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTICT OF ALABAMA.

INDEX.

	Original.	Print.
Writ of error	1	2
Capias	2	2
Cause of action	3	3
Marshal's return	3	3
Declaration	3	3
Judgment	8	6
Bond to prosecute writ of error	9	6
Clerk's certificate	10	7
Citation and return	11	7

J. & G. S. Gideon, printers.

UNITED STATES OF AMERICA:

The President of the United States, to the judges of the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama.

Because in the record and proceedings, as also in the rendition of the judgment in a plea, which is in the said circuit court, before you, or some of you, wherein Sherburne Sears is plaintiff, and Joseph R. Eastburn is defendant in error, a manifest error hath intervened to the great damage of the said plaintiff, as by his complaint appears. And it being fit, if error there be, the same should be corrected, and full and speedy justice done the parties aforesaid, do command you, if judgment be rendered, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, so that you have the same at Washington, on the first Monday of December next, in the Supreme Court of the United States, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further proceedings thereon to correct the error, what of right, according to law and the custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court,
[SEAL] this first Monday of December, in the year of our Lord one thousand eight hundred and forty-five.

Issued the seventeenth day of August, A. D. 1846.

Attest: JOHN FITTS,
Clerk C. C. So. Dist. Ala.

Pleas had before the honorable the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, at a term thereof begun and held in and for said district, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and forty-six. Present, his honor William Crawford, judge of said court.

Be it remembered, that heretofore, to wit, on the twentieth day of August, in the year of our Lord one thousand eight hundred and forty-five, Sherburne Sears sued out of said court his writ of capias ad respondendum, against Joseph R. Eastburn, in the words and figures following, to wit:

Capias.

UNITED STATES OF AMERICA:

Circuit court of the United States, for the fifth judicial circuit and southern district of Alabama.

The President of the United States, to the marshal of said district, greeting:

You are hereby commanded to take the body of Joseph R. Eastburn,

who is a citizen of the State of Alabama, and him safely keep, so that you have him before the honorable the circuit court aforesaid, at the place of holding said court, at Mobile, on the fourth Monday of December next, to answer unto Sherburne Sears, who is a citizen of the State of Louisiana, in a plea of trespass, &c., to the damage of the said Sears five thousand dollars. Herein fail not, and have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, this third Monday of April, in the year of our Lord one thousand eight hundred and forty-five.

Issued the twentieth day of August, in the year of our Lord one thousand eight hundred and forty-five.

Attest: JOHN FITTS,
Clerk C. C. Southern Dist. Ala.

Cause of action.

This suit is brought as well to try titles as to recover damages to the following described lot of land, to wit: beginning at a stone on the south side of Government street, in the city of Mobile; thence south three hundred ninety-two feet to a point; thence westerly by a fence one hundred and ninety-eight feet; thence northerly one hundred and seventy-eight feet; thence easterly by a fence one hundred and twenty feet; thence northerly two hundred and ninety-eight feet, to the south side of Government street; and thence easterly along the south side of Government street, two hundred and twenty-eight feet, to the place of beginning; being the same lot of land conveyed by Josiah Taylor to Edward Robinson, by deed bearing date the tenth August, eighteen hundred and thirty-eight; for a more particular description of which lot of land reference is made to said deed, and the record thereof, in Mobile county records.

R. B. SEWALL, *Att'y for plff.*

Marshal's return.

Received 20th August, 1845, and executed 21st October, 1845.
WM. ARMISTEAD, *U. S. M.*
By C. CUYLER, *D. M.*

And afterwards, to wit, at a term of said court, begun and held in and for said district, at Mobile, on the fourth Monday of December, in the year of our Lord one thousand eight hundred and forty-five, the said plaintiffs filed in said court the following declaration, to wit:

Declaration.

Circuit court of the United States, fifth judicial circuit, southern district of Alabama. Of the term of the fourth Monday of December, 1845.

SOUTHERN DISTRICT OF ALABAMA, *ss:*

Sherburne Sears, who is a citizen of the State of Louisiana, by his at-

torney, complains of Joseph R. Eastburn, who is a citizen of the State of Alabama, in custody, &c., of a plea of trespass. For that the said defendant, on the sixth day of August, in the year one thousand eight hundred and forty-four, and on divers other days and times between that day and the commencement of this suit, at Mobile, to wit, in the district aforesaid, with force and arms, broke and entered into and upon the following described lot of land, to wit: beginning at a stake on the south side of Government street, in the city of Mobile; thence south, three hundred and ninety-two feet, to a post; thence westerly by a fence, one hundred and ninety feet; thence northerly, one hundred and seventy-eight feet; thence easterly by a fence, one hundred and twenty feet, to the south side of Government street; and thence easterly, along the south side of Government street, two hundred and twenty-eight feet, to the place of beginning; being the same lot of land conveyed by Josiah Taylor to Edward Robinson, by deed bearing date the tenth day of August, eighteen hundred and thirty-eight, of all which lot of land and premises the said plaintiff was seized in his demesne as of fee; and the said defendant having, with force and arms as aforesaid, broke and entered in and upon the said land above described, and, as aforesaid, then and there, with force and arms, and with strong hand, ejected, expelled, put out, and removed the said plaintiff from the peaceable possession, use, occupation, and enjoyment thereof, and received the issues and profits thereof; and kept, and continued [to keep,] the plaintiff so ejected, expelled, put out, and removed, for a long space of time, to wit, from thence hitherto; whereby the said plaintiff, for and during all that time, lost and was deprived of the use and benefit of all the said land and premises, and from having or owning the issues and profits thereof; and also, for that the said defendant, on the sixth day of August, in the year *eight* hundred forty-four, and on divers other days and times between that day and the commencement of this suit, at Mobile, to wit, in the county of Mobile, in the district aforesaid, with force and arms, broke and entered upon, and into, that certain other piece of land and premises, with the tenants thereon, situate and being on the south side of Government street, within the corporate limits of the city of Mobile, described as follows, to wit: beginning at a stone on the south side of Government street in the city of Mobile; thence south, three hundred and ninety-two feet, to a point; thence northerly by a fence, one hundred and ninety-eight feet; thence northerly, one hundred and seventy-eight feet; thence easterly by a fence, one hundred and twenty feet; thence northerly, two hundred and ninety-eight feet, to the south side of Government street; and thence easterly, along the south side of Government street, two hundred and twenty-eight feet, to the place of beginning; being the same lot of land conveyed by Josiah Taylor to Edward Robinson, by deed bearing date the tenth day of August, eighteen hundred and thirty-eight, and by the said Robinson reconveyed by way of mortgage to said Taylor; and of all which land and premises the said plaintiff had a title in fee simple, and the peaceable possession. And the said defendant having so broke and entered as aforesaid, and pos-

sessed himself of said land and premises, then and there, with force and arms, ejected, expelled, and dispossessed the said plaintiff of the possession, use, occupancy, and enjoyment thereof, and then and there took and received to his own use and benefit the issues and profits arising therefrom, which were of great yearly value, to wit, of the yearly value of five hundred dollars; and kept and continued the plaintiff so ejected, expelled, and dispossessed, for a long space of time, to wit, from thence hitherto; whereby the said plaintiff, for and during all that time, lost and was deprived of the use and benefit of his said land and premises, and from having and receiving the issues and profits thereof; and also, for that the said defendant, on the sixteenth day of August, in the year eighteen hundred and forty-four, and on divers other days and times between that day and the commencement of this suit, at Mobile, to wit, in the district aforesaid, with force and arms, broke and entered into and upon that certain piece, parcel, or lot of land, situate, lying, and being in the city and county of Mobile, and described as follows, to wit: beginning at a stone on the south side of Government street, being the northeast corner of a lot of ground conveyed by Elam Phillips to George Hodges, by deed of trust bearing date the first day of August, A. D. 1834, recorded in book N, page 63, of the books of record in Mobile county; thence by a line running south, three hundred and ninety-two feet, to a point; thence by a fence, one hundred and ninety-eight feet westwardly, being the northern boundary of lands conveyed by S. Hodges to Mr. Owen, to a fence, being the boundary between the lot hereby conveyed and the premises of George Hodges; thence northerly, one hundred and seventy-eight feet, along said last named fence; thence eastwardly, one hundred and twenty feet by a fence, being the southern boundary of a lot of Wm. P. Aubrey, to the corner of the same; thence northwardly, along a fence, being the eastern boundary of said lot, two hundred and ninety-eight, to the south side of Government street, two hundred and twenty-eight feet, to the place of beginning; being the same identical premises conveyed by Josiah Taylor, by deed bearing date the tenth day of August, 1837, to Edward Robinson, and by said Robinson reconveyed, by way of mortgage, for the benefit of said Taylor, together with the tenements and appurtenances to the same belonging; and of all which piece of land and premises, with the tenements and appurtenances, the said plaintiff had a title in fee simple, and the peaceable possession. And the said defendant having so broke and entered as aforesaid, and possessed himself of said last named land and premises, then and there, with force and arms, ejected, expelled, and dispossessed the said plaintiff of the possession, use, occupancy, and enjoyment thereof, and then and there took and received, to his own use and benefit, the issues and profits arising therefrom, which were of great yearly value, to wit, of the yearly value of five hundred dollars; and kept and continued the plaintiff so ejected, expelled, and dispossessed for a long space of time, to wit, from thence hitherto; whereby the said plaintiff, for and during all that time, lost and was deprived of the use and benefit of his said land and premises, and from having and receiving the

issues and profits thereof, to wit, at Mobile, in the district aforesaid, and other wrongs to the said plaintiff then and there did, to the great damage of the plaintiff, and against the peace of the State of Alabama, to wit, in the district aforesaid; and therefore he brings suit, as well to try title as to recover damages, and he avers that the matter in dispute exceeds, exclusive of costs, the sum or value of two thousand dollars.

R. B. SEWALL, *Atty. for plff.*

Filed December term, 1846.

JOHN FITTS, *Clerk.*

And afterwards, to wit, on the twenty-third day of April, in the year of our Lord one thousand eight hundred and forty-six, being a day of a term of said court, begun and held, in and for said district, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and forty-six, the following proceedings were had, to wit:

Order.

SHERBURNE SEARS, vs. JOSEPH R. EASTBURN. } 3023.

In this cause the defendant, by his counsel, moves the court to dismiss the suit, because the statute of the State of Alabama, entitled "an act to abolish fictitious proceedings in ejectment," and for other purposes therein mentioned, approved December seventeenth, eighteen hundred and twenty-one, under which the suit is brought, does not extend to this court, and is not in force in the same; and the court being of that opinion, it is considered that the said suit be dismissed, and that the said defendant recover of the said plaintiff his costs by him herein expended.

Bond.

UNITED STATES OF AMERICA,
Circuit court of the United States, for the fifth judicial circuit and southern district of Alabama:

Know all men by these presents, that we, William H. Bunnell and R. B. Sewall, of Mobile, are held and firmly bound unto Joseph R. Eastburn, in the just and full sum of two hundred dollars, lawful money of the United States, for the payment of which, well and truly to be made, we, and each of us, bind ourselves, and each of our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents. Sealed with our seals, and dated this seventeenth day of August, in the year of our Lord one thousand eight hundred and forty-six.

The condition of the above obligation is such, that whereas Sherburne Sears has sued out a writ of error, returnable to the Supreme Court of the United States, on the first Monday of December, in the year of our Lord one thousand eight hundred and forty-six, on a certain

judgment recovered against him at a term of the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, begun and held in and for said district, at Mobile, on the second Monday of April, A. D. 1846, in a certain cause therein, wherein Sherburne Sears was plaintiff, and Joseph R. Eastburn was defendant. Now, if the said Sherburne Sears shall prosecute his said writ of error to effect, or, failing therein, shall pay to the said Joseph R. Eastburn all costs and damages which he may sustain by the failure of the said Sherburne Sears to sustain his said plea, then the beforegoing obligation to be void, otherwise to be and remain in full force, effect, and virtue.

WM. H. BUNNELL, [L. S.]
K. B. SEWALL. [L. S.]

I approve the within bond.

WM. CRAWFORD, *Judge*.

I, John Fitts, clerk of the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, do hereby certify, that the within and beforegoing eight pages and seven lines, contain a full, true, and perfect exemplification of the record and proceedings had in a certain cause, lately pending and determined therein, wherein Sherburne Sears was plaintiff, and Joseph R. Eastburn was defendant.

In testimony whereof, at office, in the city of Mobile, I have hereunto set my hand, and affixed the seal of said court, this seven-
[L. S.] teenth day of August, in the yea[illegible]r Lord one thousand eight hundred and forty-six.

JOHN FITTS,
Clerk C. C. So. Dist. Ala.

UNITED STATES OF AMERICA,
Circuit court of the United States, for the fifth judicial circuit, southern district of Alabama:

To Joseph R. Eastburn. You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington city, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the court aforesaid, wherein Sherburne Sears is plaintiff, and you are defendant in error, to shew cause, if any you have or can, why the judgment in said writ of error mentioned should not be corrected, and speedy justice be done to the parties in that behalf.

Witness the Hon. William Crawford, one of the judges of the circuit court of the United States, for the circuit aforesaid, this seventeenth day of August, in the year of our Lord one thousand eight hundred and forty-six.

WM. CRAWFORD, *Judge*.